

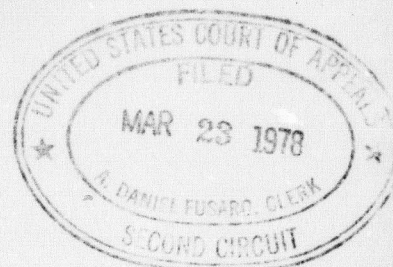
***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6209

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT



REV. DONALD L. JACKSON,
Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA and
STATE OF NEW YORK,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK.

**APPENDIX FOR APPELLEE,
UNITED STATES OF AMERICA**

RICHARD J. ARCARA,
United States Attorney,
Western District of New York,
Attorney for Appellee,
502 United States Courthouse,
Buffalo, New York 14202.

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BEST COPY AVAILABLE

Complaint.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REV. DONALD L. JACKSON
404 Western Avenue
Buffalo, New York 14203

Petitioner

VS.

UNITED STATES OF AMERICA
AND
STATE OF NEW YORK
Albany, New York

Defendants

JAMES F. DAVEY, Clerk

1. The jurisdiction of this Court is based upon 28 USC Section 1343 and all parts thereof; 42 USC Section 1981, 1982, 1983 and 1985; 42 USC Section 2000a et seq.; Constitution of the United States, Article IV, Constitution of United States, Article III Section I, Constitution of the United States, Article VI, Constitution of United States, Amendment IV, Constitution of United States, Amendment V, Constitution of United States, Amendment VI, Constitution of United States, Amendment VII, Constitution of United States, Amendment XIV, Constitution of United States, Amendment XV, Constitution of United States, Amendment XXII, Constitution of United States Amendment XXIV, the Federal legislation known as "The Civil Rights Act of 1964", and "The Civil Rights Act of 1965", and the proceeding Civil Rights Acts enacted by the Congress commencing with the year 1866; 28 USC Section 2201 and related Sections; the applicable provisions of the Internal Revenue Code, Title 26 USC Section 1 et 1 et seq., and more particularly 26 USC Section 170, and 26 USC 611-613, and 301.7623, of United States Treasury Department Rule: the amount involved exceeds \$10,000.00 excluding cost and intrest.

2. That plaintiff is a member of the Black race, a citizen of the United States, of the State of New York, of the County of Erie and a resident of the City of Buffalo, and living in the political district ~~Eleventh~~ Tenth District, of the City of Buffalo. Plaintiff is 47 years old, is a graduate of grade school and high school in Buffalo, New York, and

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and Alabama A. & M. College, Alcorn A. & M. College, Kentucky State College, and taken courses from the University of Kentucky; and received Bachelors of Law Degree from La Salle Extension University and also from 20th Century Bible School and New Truth School, received Doctor of Divinity Degree. Plaintiff served with the United States Army in both World War II and the Korean Conflict, and was Honorable Discharged, was editor and publisher of a weekly magazine, produced weekly radio broadcast and produced 30 minute T. V. Show, was former president of a Tax Exempt Educational Foundation, and Manager of a Radio Station, in 1964 was the Conservative Party endorsed candidate for State Senator from the 55 Senatorial District, all of which information was made available to each of the defendants and their agents, officers, servants and employees.

3. This action is brought by plaintiff on his own behalf concerns the Right to Vote and Hold Office, equal employment opportunity, equal protection of laws, freedom from discrimination in the distribution of public moneys and quasi-public moneys, the right to vote and to hold a position in the Judicial Branch of Government, the right to collect wages earned, and various other issues related thereto.

4. One of the objects of this proceeding is to obtain a declaratory judgment and incidental injunctive relief against the defendants declaring that Article 6, Section 20 of the Constitution of New York State, as being un-constitutional, for it violates The United States Constitution Article III Section I.

Article 6 Section 20 of the Constitution of New York State is as follows:

"JUDICIAL OFFICE QUALIFICATIONS AND RESTRICTIONS"
 NO PERSON, OTHER THAN ONE WHO HOLDS SUCH OFFICE AT THE EFFECTIVE DATE OF THIS ARTICLE, MAY ASSUME THE OFFICE OF JUDGE OF THE COURT OF APPEALS, JUSTICE OF THE SUPREME COURT, OR JUDGE OF THE COURT OF CLAIMS UNLESS HE HAS BEEN ADMITTED TO PRACTICE LAW IN THIS STATE AT LEAST TEN YEARS. NO PERSON OTHER THAN ONE WHO HOLDS SUCH OFFICE AT THE EFFECTIVE DATE OF THIS ARTICLE, MAY ASSUME THE OFFICE OF JUDGE OF THE COUNTY SURROGATE'S COURT, FAMILY COURT, A COURT FOR THE CITY OF NEW YORK ESTABLISHED PURSUANT TO SECTION FIFTEEN OF THIS ARTICLE DISTRICT COURT OR CITY COURT OUTSIDE THE CITY OF NEW YORK UNLESS HE HAS BEEN ADMITTED TO PRACTICE LAW IN THIS STATE AT LEAST FIVE YEARS OR SUCH GREATER NUMBER OF YEARS AS LEGISLATURE MAY DETERMINE.

It violates United States Constitution Amendment IX, Constitution of United States Amendment XIV, Constitution of United States Amendment XV, Constitution of United States Amendment XIX: and The Civil Rights Act of

Complaint.

Act of 1964, and further prohibiting the appointment or election of members of New York State Judicial Branch of Government, because the procedures used does not meet the requirements of Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USC 1973, have not been complied with. That United States Government's Justice Department, was notified by affidavit many months ago by Petitioner, that New York State voters requirement, violated United States Constitution, and violated Petitioners Civil Rights, requiring petitioner to attend University for 7 years, then graduate, then pass a three days Bar Examination Test, be admitted to practice law for 5 years, before being eligible to hold a position in petitioners Judicial Branch of Government. The discriminative educational requirements by New York State, deprives petitioner the right to vote with a Bachelors of Law Degree and Doctor of Divinity Degree. That the Poll Tax that was out-lawed by United States Constitution Amendment XXIV, required a poll tax payment of \$1.25 to about \$2.25. New York State Poll Tax requiring attendance at University for 7 or 8 years could be as high as \$40,000. Job and educational opportunities have not been equal as to petitioner being a Black man. That there is no Educational requirements found in United States Constitution. That United States Constitution, Article III, Section 1, list the only qualifications to hold a position in the Judicial Branch of Government as being "GOOD BEHAVIOUR". That United States of America was negligent for not taking action when duly notified by petitioner, that petitioner was being deprived the right to vote and to hold office by law in New York State.

5. Another object or sub-object is for an Order declaring the present procedure of electing Judges at Large for the City of Buffalo and County of Erie, authorized by the New York State Legislature, which deprives Petitioner the right to a criminal trial in the district where the crime was committed as authorized by 6th Amendment to United States Constitution. all Judges election or appointment violated the U. S. Constitution, therefore their election be declared Null and Void, and all their decisions and sentences be declared Null and Void since the provisions of Article 6 Section 20 of the Constitution of New York State has been enforce.

Complaint.

That Article 6 Section 138 of the New York State Election Law, give lawyers seeking a Judicial position on the ballot, greater voting rights. Lawyers can file their nominating petitions in all recognized political parties. While non-lawyers can only file their nominating petitions in the political party they are a member of. This policy makes it impossible for a lawyer not to get elected or a judge not to be re-elected.

This policy defeats the purpose of having an election. In the past 40 years there has only been one judge in this area that has lost seeking re-election after he was elected the first time.

This section of the law gives lawyers greater voting rights, when the law clearly indicates there will be equal voting rights, that one person will not have more voting rights than the next person.

See Exhibits "A" and ABA- "B". the court is not an impartial judge the court has its own investigation staff, prepares its own complaints and becomes party to the action, investigation is suppose to be left to the prosecutor.

The Common Laws have been abandoned many years ago. It is illegal to commence a criminal action against a person to force him to fix up his home, or to start a criminal action against a person and sentence him to go to City Hall and pay a demolition cost that is two or 20 times greater than the amount of a fine that could be given. The City goes upon private property without any authority and makes a profit tearing these buildings down. The City has commenced Civil actions, however they have lost them for they had no authority to go on to seize private property.

The Buffalo Housing Court, is a modern day Kangaroo Court. They send a man out to your home with a summons for a criminal matter and has it served under the civil rules, all he has to do hang it on your door and you must appear and cannot raise the question of not being served or ask for a Jury trial. Defendants would be entitled to a jury trial under the criminal section 6th Amend. U.S. Const., as well as 7th Amend under the Civil Section.

Complaint.

New York State violates United States Constitution Article IV, Section 1 and Section 2. Petitioner cannot obtain a fair impartial trial in the vicinaga, (neighborhood). (William v. Florida 399 U. S. 72, page 100.

6. Another object or sub-subject is for an order declaring the Buffalo Housing Court, as being illegal. The Court has one Judge that was elected at-large, that tries all Housing cases for the City of Buffalo, depriving Petitioner the right to a trial in the district.

The Buffalo Housing Court, issues Summons by having them tacked on your door, and if the individual fails to appear in the Court, the Judge issues an warrant for their arrest. I went away on my vacation, while I was away, an inspector, came and pinned a Summons on the door. The Summons was mailed back to the Court, informing the Court that I had not been served. The Judge issued a warrant for my arrest. I learned that criminal summons were being served the way that Civil Proceedings for housing violations. The housing court tells a person they are guilty and orders them to repair their building, which cost in most cases more than \$5,000, the Judge can fine the person \$1,000 and jail them for 10 days, plus order them to remodel their home. In the event the City tears down your building, which they have no Court order, they just go upon private property, then issue the person a summons, and the judge finds you guilty fines the individual, and then orders the individual to go to City Hall, to make arrangement to pay the City the cost of tearing down the building, in some cases the cost is higher than \$100,000.

I demanded a Jury trial and was denied a trial by a jury (Duncan v. Louisiana 391 U. S. 145). If I write a letter to the editor of the newspaper, about one of the City officials, I will be served a Summons and brought to court and rail-roaded. In the pass two years I have been given over 32 Summons. Twice I appeared in Court or rather 22 times I appeared in Court for summons served on me for property someone else owned. The inspector would say, if you keep your mouth shut, and stop attacking City officials, you would not receive these summons.

The Buffalo Housing Court, is set up for the sole purpose of depriving persons of their Civil Right and to abridge freedom of speech. If the housing court is proceeding under Civil proceedings, the United

Complaint.

States Constitution Amendment 7, provides for a Jury Trial, and since the sentence could result in a repair bill over or rather \$5,000 to \$50,000, and the demolition cost could be as high as \$100,000, the United States Constitution Amendment 6, would allow a trial by Jury, as well as United States Constitution Article-XIV Amendment XIV. City Inspectors enter my home with no search warrant, they have kicked doors in, they have threaten occupants the authority they use is a Buffalo City Ordinance Chapter XII Section 19.

"RIGHT TO ENTER BUILDING
THE COMMISSIONER OF PUBLIC WORK OR THE
DIRECTOR OF BUILDINGS OR ANY EMPLOYEE OF THE
CITY DULY AUTHORIZED BY EITHER OF THEM MAY
ENTER ANY PREMISES IN THE CITY OF BUFFALO FOR
THE PURPOSE OF EXAMING ITS CONDITION."

That the Commissioner of Public Work or the Director of Buildings, can send any employee to my home at any hour, the employee can search my home without a search warrant, and present any evidence found in the Court and have you convicted, I cannot raise the issue of illegal search, for I am a Black man, and have no voice in the Buffalo Housing Court. This violates the United States Constitution, Amendment IV.
(*Camara v. Municipal Court* 387 U. S. 523 and *See v. Seattle* 387 U. S. 541)
United States Supreme Court held in both cases City and Health Inspectors must have search warrants to enter homes and buildings. The State of New York, makes no effort to protect the Civil Rights of Petitioner.
(*People v. Jones* 42 L. W. 2003 (6/5/73)).

7. Another objective of this proceeding is to obtain a declaratory judgment and incidental injunctive relief against the defendants United States of America, to pay Petitioner his earned wages of \$ 3 billion, plus intrest from 1971, and to make United States of America to enforce the law against the Rich White people equally as they enforce the law against ones who are not so rich.

8. That rule 301.7623 of United States Treasury Department authorizes payment of 10%, to any one who supplies the Internal Revenue Service with information in detail of a tax payer who is violating the law and not paying their legal tax.

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9. That Petitioner went to great expense and conducted a survey, however the survey came about by accident. I was President of a Tax Exempt Foundation, in the years 1969, 1970, 1971, which I was attempting to raise funds for the foundation, as well as to secure scholarship for my 5 children, and funds to establish a Bank, and a factory to manufactory of Pet Food, cat and dogs, I also desired to become a director of a foundation, for I was leaving the foundation that I was connected with.

10. That I circulated letters to 15,000 foundations and found that, all of them were violating the law, however I did find 100 foundations that had made a donation over the years to Blacks, still they were discriminating. I found the following:

- (a). I was rejected for employment as a director, because of my race being a Black man.
- (b). None of the foundations would invest in Black businesses.
- (c). None of the foundations would give grants to minority members on equal basis as they did White people.
- (d). That the Courts have held that Grant of Tax Exemption State Action, and they had to obey the 14 Amend. U. S. Constitution, none of the foundations complied with Section 5, of the 1965 Civil Rights Act.
- (e). Many of the foundations are family controlled or controlled by the corporation that makes large donations, making the family or corporation tax exempt.
- (f). That none of the foundation has or would hire Black employees.
- (g). That the foundations were not distributing their assets.

That the court void the grant of tax exemption to those organization that practice racial discrimination *McGlotten v. Connally* 338 F. Supp. 448 *Green v. Kennedy* 309 F. Supp 1127, Dept of Revenue for the State of Wisconsin, et al Defendant, Plaintiff (Pitts) 333 F. Supp 662.

That 3078.03 (5) c, of the Tax Reform Act of 1969, states members of the family are Disqualified persons being officers of foundations, Section 101 (a) of the Tax Reform Act of 1969, list penalty equal to 100% imposed on disqualified persons of foundations. That since 1971, I have completed the survey of the remainder of the foundations making a total of 21,000 foundations that are violating the law, which has assets over \$70 billion dollars.

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Complaint.

11. That Petitioner pointed out two foundations as examples Franklin Lindsay Student Aid Foundation, Austin Texas, this foundation purpose and activities: STUDENTS LOANS LIMITED TO WHITE STUDENTS ATTENDING COLLEGES OR UNIVERSITIES IN TEXAS.

Lettie Pate Whitehead Foundation, Inc. Atlanta, Ga., Purpose and Activities: EDUCATIONAL AND CHARITABLE PURPOSE FOR THE EDUCATION OF "POOR WHITE CHRISTIAN GIRLS, AND TO BENEFIT AGED WHITE CHRISTIAN WOMEN IN THE SOUTHEAST.

12. That after notifying the United States Treasury Department on November 24, 1971, and I made repeated request without any kind of response, finally April 15, 1973, I received a letter signed by S. B. WOLFE, Director, Audit Division of the Internal Revenue Service, informing me that the Internal Revenue Service had no authority to eliminate racial discrimination, referring to employment and giving grants by Tax Exempt Organizations. The Internal Revenue Service has many Court decision declaring that organizations that practice racial discrimination cannot obtain a Tax Exemption, and if they receive a Tax Exemption and found to be practicing racial discrimination that the tax exemption must be revoked immediately. The Internal Revenue Service, refuse to enforce the laws against rich White people.

13. That it was wilful negligence on the part of United States of America, its agents, servants and employees, for not enforcing the provisions of United States Constitution and laws of United States, which would have resulted in collecting over \$30 billion, Petitioners wages or 10% would be over \$3 billion. Since its negligence on the part of United States of America, Petitioner ask the court to Order United States to pay Petitioner \$3 billion plus intrest from 1971.

14. Another object or sub-object is for an Order declaring the tax exempt status of each of the foundation practicing racial discrimination, be declared null and void for the years they have been violating the laws.

Complaint.

15. Another object is for an Order declaring the practice of discrimination against Petitioner by the United States Department of Interior cease, plus payment of damages.

16. That I-appli Petitioner applied to the Department of Interior for \$250,000 loan to seek for minerals requesting that my application be accepted under the announced program of waiving the rules to encourage more individuals and firms to explore for minerals that are a great shortage of, my application was in letter form, I was required to wait long periods of time for a reply, which each reply avoided to mention President Nixon's announced program of waiving the rules, I was told because I am a poor Black man, that the rules were not waived and that I had to apply under the regular rules, while White people were allowed to apply under the rules that were waived by President Nixon.

17. That Petitioner requested an application to bid on oil leases offered for bids by United States Department of Interior, I wanted to bid, however I learned that big oil firms were also allowed to bid against me, however I did not submit my bid because I felt it was useless under the procedure being followed, the United States Department of Interior discriminated against me because of my race and because I am poor Black man.

That United States Department of Interior, offered for bids Oil Shale lease in Colorado. The high bid was made by combination bid by Standard Oil of Indiana and Gulf Oil Co., \$210,305,600. Standard Oil of Indiana, was paid Depletion Allowance by United States Government for the year 1972, approximately \$383,000,000, while Gulf Oil Co., was paid Depletion Allowance by United States Government, for the year 1972, approximately \$574,000,000. Exxon Oil Co and Mobil Oil Co., paid \$211,997,600 for 5,760 acres of lease land off Mississippi, Alabama and Florida. Exxon Oil CO., was paid by United States Government in 1972 approximately \$2 billion, in Depletion Allowance, while Mobil Oil Co, was paid by United States Government Depletion Allowance for the year 1972 \$444,000,000. Shell Oil paid \$4.5 Million on two tracts in the Geysers area North of San Francisco. United States Government paid Shell Oil Depletion Allowance in 1972, \$3 billion.

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Complaint.

18. That United States Department of Interior, allowing these oil giants to use the money United States Government gave them in depletion allowance to bid on these leases discriminates against Petitioner. These oil firms at the end of the year deduct the bid of the leases as operating expenses, which amount to a total gift by the United States Government these oil leases to the oil firms. This policy United States is losing.

19. That the Court held in the case *Burton v. Wilmington*

(365 U. S. 715): "WHEN FEDERAL FUNDS ARE MINGLED WITH PRIVATE FUNDS, THE GOVERNMENT BECOMES A JOINT PARTICIPANT, IN THE OPERATION OF THE BUSINESS, AND MUST OBEY THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT TO U. S. CONSTITUTION."

It is also a conflict of interest to allow the oil firms to bid.

20. That United States Department of Interior discriminates against me by not giving Petitioner oil leases, or allowing the 100% percent of the bid be made as a mortgage, and Petitioner make his own deal with various oil firms, and the cash receive pay off United States Department of Interior. This would result in the Government making money on the leases, and would eliminate this racial discrimination, and place all parties on the same equal footing.

21. Another object of this proceedings is for an Order directing United States Government to declare all Oil leases or mineral lease given to Oil Firms for the years 1973 and 1974, be declared null and void, and put the lease up for bid again and not allowing these Oil Firms to bid, or giving or selling an oil lease property to Petitioner with the GOVERNMENT taking 100% mortgage back, this would eliminate the unequal standards.

22. A further object of this action is money damages be awarded to Petitioner for my damages as result of not being able to vote and hold office in the Judicial Branch of Government, not being paid my wages, discrimination in employment and discrimination in leasing public lands.

Complaint.

23. A further object of this action is the prohibition of appointment of Judges or election of Judges in New York State or in Western New York State because the procedures being used has not complied with Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973.

24. A further object of this action is the prohibition of the election of trustees and directors to some or all of the foundations that has been granted status of Tax Exemption and all foundations being private, because they failed to comply with Public Law 89-110, Voting Rights Act of 1965, Section 5, 42 USCS 1973, as to the proper mode of election of trustees and directors.

25. A further object of this action is the convening of a three Judge court pursuant to Title 28 of the United States Code, Section 2281^{and 2284}, as the relief sought is an interlocutory or permanent injunction restraining the enforcement, operation or execution of statutes of the State of New York by restraining the action of an officer of such State in the enforcement or execution of said statute and of an order by the applicable administrative agency acting under the statutes of said State upon the grounds that said acts and statute are unconstitutional: also pursuant to 28 USCS Section 2282²²⁸⁴ because the relief requested is an injunction restraining enforcement, operation and execution of an Act of Congress for repugnance to the Constitution of the United States.

26. That plaintiff investigation revealed various foundations none of them have invested in black groups on a basis anywhere equal or in proportion to the black population in the country although a few foundations appear to have made token donations.

27. That the defendants giving tax exemption to foundations and charities, which foundations and charities have denied equal benefit of the laws in that they have refused to grant to the plaintiff, grants and investments, though they do give employment, grants and investments to whites, said grants and investments being given as result of their tax exemption under the laws of the United States, even though whites are not as qualified or no more qualified for employment, grants and investments than the plaintiff.

Complaint.

28. That the organization claiming a tax exemption as a charitable organization under both State laws and federal laws and claiming an absolute right of choice they reap the benefits of the special exemption while depriving plaintiff and the benefits of their grants and investments solely because of the fact that plaintiff is black.

29. That the State of New York^{NY} their agents, servants, and employees, have conspired individually and with others to deprive Plaintiff, equal protection of the law, the right to vote, the right to a fair trial, and a right to a trial by his peers and in the vicinage "neighborhood" That New York State entire Judicial System is corrupt.

I was tried in the CITY COURT OF BUFFALO, for a Housing violation then before Judge Alois C. Mazur, I was told that I was guilty and fined \$300.00. I was never arraigned or allowed to plead to the charge, nor was I told that I was entitled to counsel, the inspector testified he filed a false report. I appealed the case to the County Court to Judge Frank R. Bayger, as Judge Bayger, said Judge Mazur, is a good friend of mine I am certain he could not do no wrong, he up-held the conviction. I then appealed the case to Judge Matthew J. Jasen, State of New York Court of Appeals. Judge Jasen, upheld the conviction and wrote there was no violations of the law. I was so shocked when reading Judge Jasen's decision, so that I telephoned him and asked him if he made a mistake. he replied I see no reason this case should be reviewed, he said send me another request and I will review it, the same decision was rendered later I learned that Judge Mazure who is now on the County Court Bench and Judge Bayger, who is now on the Supreme Court Bench of Erie County, and Judge Jasen, all came from the same law firm. This matter was brought to the attention of the Bar Association, as well, nothing was done about it, because it was White people depriving a Black man of his rights.

The State of New York supplies funds to Erie County and the City of Buffalo, to maintain its Courts, and the State of New York, is well aware of the injustices, but ignore them as long as the oppress are Black people.

Complaint.

30. That United States Government, gives big oil firms millions of dollars, and becomes partner in their private business under the name of depletion allowance, the Department of Interior of United States, then request these firms to bid on properties offered for lease. These Oil firms with millions of tax payers dollars in their pockets, and UNITED STATES OF AMERICA, has become a silent partner, and these oil firms are allowed to bid against poor Black man as Plaintiff is, and United States Government, discriminates against plaintiff, and does not give or lend plaintiff any money whereas plaintiff could offer a bid on these public lands. This violates petitioners Civil Rights, its a conflict of intrest for the oil firms to bid, and it puts Petitioner at a disadvantage, and violates the Equal Protection Clause of the 14th Amendment to United States Constitution.

31. That as the result of violation of 42 USC 1981, 1982, 1983 and 1985, 42 USC 2000a et seq., Constitution of United States provisions Article IV, Article III, Section I, Article VI, Constitution of United States, Amendments IV, V, VI, VII, XIV XV, XXII, XXIV, plaintiff is entitled to money damages.

32. That each of the defendants are controlled by the Bar Association and political parties, and have entered into conspiracy to pass laws to give the legal profession control of the State and Federal Government, and to deprive petitioner rights and privileges such as the right to vote, equal voting rights guaranteed by the Federal Constitution, and laws of United States, and to deny to plaintiff employment, grants and funds for investments from foundations they the defendants give Tax Exemption status, and The Department of Interior of United States, allows bids from Oil firms, who receive large amount of funds from the Federal Government, and had entered into conspiracy, to give away valuable mineral properties, under the guise of bidding, rigged to deprive a poor Black man as Petitioner of his Equal protection of the law.

Complaint.

33. 33. That each of the defendants allow foundations or charities that they allow Tax Exemption Status, employees mutually employed by them who determine to whom employment, grants and investments are made that these charities or foundations have conspired to deny plaintiff, employment, grants, and investments solely because of their race.

34. That the defendants allow foundations or charities, that they allow tax exemption status, to be controlled by various corporations who hold controlling interest in the stock of the corporation and are trustees or directors of the corporation and are also trustees or directors of the foundation or charities and that in their interworkings with the corporations they have conspired against plaintiff as aforesaid, denying to petitioner employment, grants and investments.

35. That the aforesaid conspiracies are in violation of 42 USC 1985 in that these acts are done for the specific purpose of depriving the plaintiff equal protection of the laws or equal privileges and immunities under the law and further that the defendants-were-acting-agents, servants and employees were acting under color of state law in that their acts were motivated by, and inseparably integrated with the tax exemption given them by the State of New York and with the tax exemption given them under Title 26 of the United States Code.

36. That the defendants have violated the law in that they have represented to the general public that they are complying with the laws of New York and with the laws of the United States when in fact they have to their own knowledge practiced discrimination in employment, grants and investments, voting, for the purposes of obtaining tangible and intangible items of value of from others, all in violation of 42 USC Section 1985 (3).

37. That defendants give hospitals tax exempt status in violation of the congressional and judicial requirement that the application of tax exemption for charitable organizations to hospitals be conditioned upon the demonstration that hospital give to poor persons in need of hospitalization, hospitals with their exemption status, continue to charge the indigent members or refuse to treat them because they have no money.

Complaint.

WHEREFORE, the plaintiff respectfully request-the- requests the Court to award the following relief:

a. Ordering the convening of a three-judge court as required by Section 2281 and 2282 of 28 USC because plaintiff demand an order enjoining defendants from depriving me the right to vote and hold office in my petitioners judicial branch of government, and to vote in the election of Tax Exempt Foundations.

b. Awarding to Plaintiff, pursuant to the provisions of 42 USC 1983, money damages against Defendant United States of America for not providing petitioner equal voting rights, after being notified that New York State was violating the United States Constitution, Money damages for loss in wages for not being able to vote and hold position in the Judicial Branch of Government \$1,250,000 and Punitive Damages \$6,000,000.

c. Awarding to Plaintiff, pursuant to the provisions of 42 USC 1983, money damages against Defendant New York State \$1,200,000 and Punitive damages \$8,000,000.

d. Awarding to Plaintiff, pursuant to the provisions of 42 USC 1983, money damages and 42 USC Section 2000a et seq, for failure in United States of America, agents, servants and employees enforcing the existing constitutional provisions and laws of United States, which amount to United States Government paying these tax exempt foundations to discriminate against Plaintiff wages in the amount of 10%, which the Internal Revenue would have collected if enforced racial discrimination in the amount of \$ 3 BILLION and Punitive damages in the amount of \$10 Billion.

e. Awarding to Plaintiff, pursuant to the provisions of 42 USC 1983, money damages, for giving tax exempt foundation State assistance in the way of tax exemption to discriminate against petitioner in the amount of \$1,000,000, against State of New York, and punitive damage in the amount of \$5,000,000

f. Awarding to plaintiff, pursuant to the provisions of 42 USC 1983, money damages, against United States of America, for becoming partner with oil firms, by mingling public funds with private funds, by giving depletion allowance to private oil firms, and then

Complaint.

allowing these firms to bid against a poor Black man, that United States Government gives nothing, which amounts to United States Government giving away valuable lands to rich oil firms and discriminating against Petitioner, money damages \$25,000,000, and punitive damages \$150,000,000

g. An award of money damages to the plaintiff pursuant to 42 USC 1981 and 1985, against both defendants in the amount of \$5,000,000 and for punitive damages of \$25,000,000.

h. A declaratory judgment declaring as a matter of law that the defendants herein have violated the Constitutional rights of the plaintiff.

i. For such other and further relief as the Court may deem proper.

Rev. Donald L. Jackson
 (REV. DONALD L. JACKSON)
 494 Masten Avenue
 Buffalo, New York 14209
 Phone 882-5674

STATE OF NEW YORK)
 COUNTY OF ERIE) SS:
 CITY OF BUFFALO)

REV. DONALD L. JACKSON, being duly sworn deposes and says that he is Petitioner in this action that he has read the complaint and knows that contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to these matters he believes it to be true.

Rev. Donald L. Jackson
 Rev. Donald L. Jackson

SWORN TO BEFORE ME THIS

13th DAY OF MARCH 1974.

John D. Small
 Notary Public State of New York
 My Comm. Expires 3/31/75

JOHN D. SMALL
 Notary Public State of New York
 My Comm. Expires 3/31/75

**Memorandum of Law in Support of Defendant United
States of America's Motion to Dismiss.**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON,
Plaintiff

-v-

UNITED STATES OF AMERICA AND
THE STATE OF NEW YORK,
Defendants

:
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CIVIL 74-293

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT UNITED STATES OF
AMERICA'S MOTION TO DISMISS**

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of Counsel

**Memorandum of Law in Support of Defendant United
States of America's Motion to Dismiss.**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON,

Plaintiff

-v-

UNITED STATES OF AMERICA AND
THE STATE OF NEW YORK,

Defendants

CIVIL 74-293

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT UNITED STATES OF
AMERICA'S MOTION TO DISMISS**

PRELIMINARY STATEMENT

Plaintiff Donald Jackson has sued the United States and the State of New York alleging several quite disparate causes of action against the United States. They involve the following:

1. The granting of tax exempt status to charitable foundations who discriminate against plaintiff (paragraphs 3, 7, 8, 9, 10, 11, 12, 13, 14, 22, 24, 26, 27, 28, 31, 33, 34, 35, 36 and paragraphs D and E on page 14 of the complaint, referred to hereinafter as "charitable foundations claim").
2. The discriminatory granting of oil leases (paragraphs 3, 15, 16, 17, 18, 19, 20, 21, 22, 30, 31, 32,

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36 and paragraph F on page 14, referred to hereinafter as "oil lease claim").

3. Damages for being negligent in not enforcing plaintiff's constitutional rights to equal protection of the laws as they may be affected by the New York statutory scheme for election of judges (paragraph 4, referred to hereinafter as "judicial election claim").

ARGUMENT

POINT I

THE CHARITABLE FOUNDATIONS CLAIM
SHOULD BE DISMISSED ON THE
GROUNDS OF RES JUDICATA

Plaintiff alleges that he has conducted a survey of charitable foundations, and that he has discovered 21,000 which are disbursing their moneys and positions in a discriminatory fashion. He asserts that because these foundations are discriminating, the Federal Government has improperly granted them their tax exempt status. He requests that the tax exempt status of the foundations be revoked for the years that they allegedly discriminated, and that he, pursuant to 26 CFR 301.7623-(1), receive ten per cent of the taxes due the United States, in this case three billion dollars. He also seeks ten billion dollars from the United States in punitive damages for not enforcing the "constitutional provisions and laws of the United States". This portion of

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plaintiff's lawsuit also alleges that "the election of trustees to some or all of the foundations that has been granted status of Tax Exemption" has been conducted in a discriminatory manner. For this reason, he seeks "the prohibition of the election of trustees and directors" to said foundations (paragraph 14).

Rev. Jackson has previously brought two lawsuits in this District involving the identical issues present in this case regarding the charitable foundations claim (Rev. Donald L. Jackson v. The Statler Foundation, et al., Civil 1971-592, and Rev. Donald L. Jackson v. The Statler Foundation, et al., Civil 1974-185). Both suits were dismissed in a decision and order by this Court dated July 18, 1975. In addition to granting defendants' motions for summary judgment, the Court also held that plaintiff's conduct did not indicate any inclination towards resolving the issues in the suits. Since both of these reasons for dismissal are entitled to res judicata effect, plaintiff is barred from bringing this action.

A. Summary judgment

A summary judgment is a final judgment, Poss v. Lieberman, 299 F.2d 358 (2nd Cir. 1962), on the merits, sufficient to

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raise the defense of res judicata in any subsequent action between the parties. Hubicki v. ACF Industries, Inc., 484 F.2d 519 (3rd Cir. 1973); Margardt v. Colonial-American National Bank of Roanoke, et al., 140 F.2d 701 (D.C.Cir. 1944). In the previous Jackson v. Statler suits, the defendants' motion for summary judgment was granted by the District Court after plaintiff failed to file affidavits even though all parties to the action had more than an adequate opportunity to do so.

Where the parties had full opportunity to air their contentions, the judgment reaches the merits of the claim raised by the party against whom the judgment is taken. Wright v. Montana-Dakota Utilities Company, 299 F.2d 470 (9th Cir. 1962), cert. denied 371 U.S. 962 (1963), rehearing denied 372 U.S. 932 (1963). Plaintiff has had two previous chances to litigate his claim regarding the charitable foundations and has failed to do so. He should not be given another.

B. Involuntary dismissal

In its decision and order of July 18, 1975, the Court made the following findings:

**Memorandum of Law in Support of Defendant United
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Time and again the plaintiff has failed or refused to follow the directions of the Court. He has failed to file objections to interrogatories, to file answering affidavits in support of his resistance to the summary judgment motions, and has failed to file the explanatory affidavits required by the orders. His tactics have been designed to frustrate a reasonable resolution of the problems facing the Court and, at times, have bordered on the contemptuous. His refusal to follow the directions of the Court has required the expenditure of a great deal of time and money on the part of the litigants and the Court. Although given every opportunity to make a case, and to respond to the motions within the rules, the plaintiff has failed or refused to do so.

Rule 41(b) of the Federal Rules of Civil Procedure provides in pertinent part as follows:

Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him.... Unless the Court in its order for dismissal otherwise specifies, a dismissal under this subdivision...operates as an adjudication upon the merits.

Since the dismissal order did not otherwise specify, the dismissal operated as an adjudication of plaintiff's claims on the merits. This result was foreshadowed by the Court's earlier warning that plaintiff's failure to comply with orders of the Court "may result in dismissal of both

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Civil 71-592, and Civil 74-185 on the merits" (see page 6, Decision and Order, dated January 7, 1975).

Involuntary dismissal pursuant to Rule 41(b) may result from failure to file controverting affidavits in opposition to a motion for summary judgment. Stanley v. Continental Oil Co., 536 F.2d 914 (10th Cir. 1976); failure to comply with any order of the Court, Petnel v. AT&T, 434 F.2d 645 (2nd Cir. 1970); Theodoroulos v. Thompson-Stanette, Co., 418 F.2d 350 (2nd Cir. 1969), cert. denied 398 U.S. 905 (1970); Demeulenaere v. Rockwell Manufacturing Co., 312 F.2d 209 (2nd Cir. 1962), cert. denied 374 U.S. 813 (1963), or for failure to appear in Court when scheduled to do so, Link v. Wabach Railroad Co., 370 U.S. 626 (1962).

Any one of these actions is sufficient grounds for dismissal of a case on the merits. Plaintiff in the Statler cases was guilty of all of these. Since a 41(b) dismissal is a final judgment, Allied Air Freight, Inc. v. Pan Am World Airways, Inc., 393 F.2d 441 (2nd Cir. 1968). A dismissal under this section for failure to comply with a Court order should, unless the Court specifies otherwise, bar a subsequent action. Costello v. U.S., 365 U.S. 265 (1961).

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C. Retraxit

Another reason exists for giving the Statler judgment res judicata effect. On page 5 of his decision and order of July 18, 1975, the Court noted that plaintiff had "stated in open Court that he would consent to a dismissal of the action in Civil 1971-529...." Such an open and voluntary renunciation of an action by the plaintiff in Court has the same effect as a verdict and judgment on the merits, and is a bar to another action for the same cause between the parties. U.S. v. Parker, 120 U.S. 89 (1886).

D. Res judicata effect

In the previous Statler cases, Jackson sought essentially the same relief as he is seeking in this portion of the present action, i.e., damages, and injunctive and declaratory relief for alleged racial discrimination against himself, his children and his foundation, in that the defendant foundations refused to hire him as a director of their foundations, refused to grant money to his foundation, and refused to give scholarships to his children. In both of the previous Jackson v. Statler Foundation, et al. cases, the United States was a party defendant. In Civil 1971-592,

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the Secretary of the Treasury, and the Commissioner of Internal Revenue were named defendants, and in Civil 1974-185, the Secretary of the Treasury was a defendant. All were defendants in their official capacities. In the present suit, the United States is the named defendant. The parties are, in legal effect, the same, and the doctrine of res judicata is applicable. Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381 (1939).

The Statler suits arose out of some ten to fifteen form letters sent to some 14,900 foundations over a period of three years. Suit was instituted against thirteen of these foundations based in Buffalo. Since that time, plaintiff has allegedly "completed the survey", making a total of 21,000 foundations which are violating the law. Although more foundations are allegedly known to be guilty of the discrimination charged by plaintiff in the Statler cases, the issues are the same. The alleged discrimination arose out of the same or similar form letters. Only the magnitude of the alleged discrimination, and of plaintiff's claim for damages, have increased. The differences are quantitative, not qualitative.

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Indeed the claims...so precisely rest upon identical facts as to be little more than the equivalent of different epithets to characterize the same group of circumstances.... The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination is a violation of but one right, by a single legal wrong.

Hurn v. Ousler, 289 U.S. 238, 246 (1932). "A cause of action does not consist of facts, but of the unlawful violation of a right, which the facts show." American Fire and Casualty Co. v. Finn, 341 U.S. 6, 13 (1951) quoting from Baltimore Steamship Co. v. Phillips, 274 U.S. 316, 321 (1926). See Res Judicata, 38 Yale Law Journal 299, 313-314. However many foundations plaintiff alleges discriminated against him, the same rights have been infringed upon. The cause of action is the same in this suit, as in the earlier Jackson v. Statler suits.

Public policy dictates that there should be an end to this litigation. The issues have been contested and the parties should be bound by the result of the contest. These matters should be considered forever settled between the parties. See Durfee v. Duke, 375 U.S. 106 (1963); Badwin v. Iowa State Traveling Men's Association, 283 U.S. 522 (1931).

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The policy of judicial economy, with its purpose of avoiding repetitious suits, demands an end to suits previously adjudicated. Commissioner v. Sunnen, 333 U.S. 591 (1938).

Plaintiff's attempts to challenge the tax exempt status of charitable foundations have twice failed upon the identical issues presented in the present case. That is enough. Merely by adding names to his already lengthy list of alleged discriminators does not renew an already exhausted cause of action. If it did, this matter would never be laid to rest.

Even if the Court determines that a different cause of action is involved here, than was involved in the earlier Statler cases, plaintiff should be prevented from continuing this suit. Because the issues raised here are the same as were raised in the earlier cases, the doctrine of collateral estoppel is applicable and operates as a bar to any further litigation of this claim by the plaintiff. Partmar Corp. v. Paramount Corp., 347 U.S. 89 (1953).

POINT II

**THE CHARITABLE FOUNDATIONS CLAIM SHOULD
BE DISMISSED FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE GRANTED**

A motion to dismiss for failure to state a claim upon which relief can be granted must be read in conjunction with

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Rule 8(a) of the Federal Rules of Civil Procedure which provides that a pleading shall contain "a short and plain statement of the claim showing the pleader is entitled to relief". Wright and Miller, Federal Practice and Procedure, Section 1256. In Prezzi v. Schelter, et al., 469 F.2d 691 (2nd Cir. 1972), plaintiff's pro se complaint was dismissed under Federal Rule 12(b)(6) because it contained "a prolixity of unrelated and vituperative charges". Id. at 692.

A similar result is clearly warranted here, as any reading of the complaint will amply demonstrate. The complaint in the present action is long, rambling, conclusory, and because of the lack of supporting factual allegations, it does not show that the pleader is entitled to relief.

For example, in paragraph 10(a) plaintiff contends, "I was rejected for employment as a director (of 21,000 foundations), because of my race being a Black man". No facts are offered to support this allegation. Moreover, the complaint abounds with similar conclusions unsupported by any facts which show that the plaintiff is entitled to relief.

In Albany Welfare Rights Organization Day Care Center, Inc. v. Schreck, 463 F.2d 620 (2nd Cir. 1972) cert. denied

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410 U.S. 944 (1973), the plaintiffs sought relief for alleged violation of civil rights statutes. The Court held that conclusory allegations of discrimination are insufficient as a matter of law to state a claim for relief. See also Avins v. Mangum, 450 F.2d 932 (2nd Cir. 1971). In the present action, there are no facts in the complaint to support the allegations that plaintiff was refused employment, grants, or the like for any racially discriminatory motive. The allegations are wholly conclusory and fail to state a claim upon which relief can be granted.

POINT III

THE OIL LEASE CLAIM SHOULD BE
DISMISSED FOR FAILURE TO STATE
A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Plaintiff also complains about certain practices of the United States Department of the Interior regarding the granting of loans to explore for minerals, and oil leases. Plaintiff claims he was denied loans, and leases due to his race. He seeks injunctive and declaratory relief, and monetary damages.

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The plaintiff's allegations with respect to the oil lease claim are also conclusory and unsupported by factual statements. For this reason, the claim should be dismissed.

Moreover, the plaintiff fails to provide "a short and plain statement of the grounds upon which the court's jurisdiction depends", as required by Rule 8(a) of the Federal Rules of Civil Procedure. For instance, in paragraph 16 of his complaint, plaintiff alleges he applied for a \$250,000 loan "to explore for minerals that are a great shortage of". He further alleges that he was denied the loan solely because he was a "poor Black man". Plaintiff does not say pursuant to what statutes, rules, or regulations he applied for this loan, nor does he allege who received these loans.

Chapter 17 of Title 30, United States Code, Sections 641-646, entitled EXPLORATION PROGRAM FOR DISCOVERY OF MINERALS, is the pertinent statute concerning loans for mineral exploration. Section 641 provides as follows:

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The Secretary of the Interior is hereby authorized and directed, in order to provide for discovery of additional domestic mineral reserves, to establish and maintain a program for exploration by private industry within the United States, its territories and possessions for such minerals, excluding organic fuels, as he shall from time to time designate, and to provide federal financial assistance on a participating basis for that purpose.

Plaintiff does not allege that he is a "private industry" or agent thereof. No state of facts which points to his status as that of a "private industry" can be gleaned from his complaint. Such status is required to be eligible for a loan under Title 30, United States Code, Section 641. See, U.S. v. Continental Can Co., 378 U.S. 441 (1964) ("industry" refers to similarity of production facilities and products).

The only mineral which plaintiff is concerned with in his complaint is oil. He devotes nine paragraphs to it. Although plaintiff does not specifically refer to oil as the object of his explorations, it is not an unreasonable inference that such is his aim. Section 641 excludes organic fuels from its scope, thereby precluding anyone from acquiring a loan for such purposes.

According to Title 30, United States Code, Section 642(f),

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No funds shall be made available under this chapter unless the applicant shall furnish evidence that funds from commercial sources are unavailable on reasonable terms.

Plaintiff does not, in his complaint, furnish such evidence, nor does he allege that he complied with this section when applying for the loan.

For these reasons, plaintiff has failed to state a claim regarding the alleged discriminatory denial of his mineral exploration loan.

In paragraph 17 plaintiff alleges he was going to apply for an oil lease, but did not do so when he learned that the "big oil firms were also allowed to bid". Plaintiff is not alleging that he was unjustly denied an oil lease, because he did not even apply for one. He is alleging, rather, that the entire scheme of granting oil leases is unconstitutional. Plaintiff's conclusory allegations are far from sufficient indicia of the unconstitutionality of the present methods of granting oil leases. This is especially true in view of the reluctance of the courts to find any congressional product unconstitutional. See Katzenbach v. Morgan, 384 U.S. 641 (1966). To rebut this presumption of constitutionality,

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facts must be specifically set forth. Aetna Insurance Company v. Hyde, 275 U.S. 440 (1928).

Apparently, plaintiff's failure to bid resulted from the Department of Interior, Bureau of Land Management requirement set forth in 43 CFR Section 3120.1-4(b) which states that any bid for leases must be accompanied by one fifth of the bid amount. The object of such a requirement is obvious--to avoid frivolous bids. Plaintiff repeatedly refers to himself as "poor" in his complaint. That major oil firms were granted the oil leases which plaintiff did not even apply for, in no way substantiates his claim of racial discrimination. Race is by no means the only difference between plaintiff and these giant corporations, if they can be compared at all.

Since plaintiff alleges no facts substantiating his claim of discrimination, this claim should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Albany Welfare Rights Organization Day Care Center, Inc. v. Schreck, 463 F.2d 620 (2nd Cir. 1972), cert. denied 410 U.S. 944 (1973); Avins v. Mangum, 450 F.2d 932 (2nd Cir. 1971).

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States of America's Motion to Dismiss.**

POINT IV

**THE OIL LEASE CLAIM SHOULD BE
DISMISSED FOR LACK OF
JURISDICTION OVER THE SUBJECT MATTER**

Plaintiff is disappointed with determinations of the Secretary of Interior regarding the granting of oil leases, and mineral exploration loans. The Federal Mining Leasing Act of 1920, 30 U.S.C. Sections 181 et. seq., as amended, placed all oil, gas, and petroleum lands which were property of the United States in the exclusive jurisdiction of the Department of the Interior, to be administered by the Secretary of the Interior. Thomas v. Union Pacific Railroad Company, 239 F.2d 641 (10th Cir. 1956). It is well accepted that the jurisdiction of the Bureau of Land Management over proceedings to acquire public lands is exclusive, so long as title remains in the Government: See Best v. Humboldt Mining Co., 371 U.S. 334 (1962) where the Court said as follows:

Congress has entrusted the Department of the Interior with the management of the public domain and prescribed the process by which claims against the public domain may be perfected. The United States, which holds legal title to the lands, plainly can prescribe the procedure which any claimant must follow to acquire rights in the public sector. Id. at 339.

**Memorandum of Law in Support of Defendant United
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Controversies over mining claims are solved by appeal to the Department of Interior, and not through the Courts. Id. at 334. Administrative appeals must first be exhausted, and only then may a leasing controversy be appealed to the judicial department. Boesche v. Udall, 373 U.S. 472 (1963).

According to the regulations set forth in Title 30 of the Code of Federal Regulations entitled "Mineral Resources", appeals of adverse decisions are to be directed within thirty days of the decision, first to the Director, Geological Survey, and then to the Secretary, Board of Land Appeals. 30 CFR Sections 291 et seq. 1976; 43 CFR Section 4.402(b) 1976; see also 371 U.S. at 338 n. 7.

Plaintiff does not contend that he complied with this procedure. Indeed, he never mentions the administrative appeal procedure, even though it is a necessary prerequisite to any judicial determination concerning mineral resources. Because of plaintiff's failure in this respect, the court lacks jurisdiction of this portion of plaintiff's case and it should be dismissed.

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POINT V

**THE OIL LEASE CLAIM SHOULD BE
DISMISSED BECAUSE PLAINTIFF LACKS
THE STANDING TO BRING SUCH A SUIT**

In order to have standing to seek judicial review, a person must show that he himself has suffered or will suffer injury, whether economic or otherwise. Sierra Club v. Morton, 405 U.S. 727 (1972). It must be alleged that the challenged action has caused the claimant "injury in fact". Data Processing Service v. Camp, 397 U.S. 150 (1969). The "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." 405 U.S. at 727. "One to whom application of a statute is constitutional will not be heard to attack it on the ground that it might also be taken as applying to other persons or other situations in which its application might be unconstitutional". United States v. Raines, 362 U.S. 17, 21 (1960). The injury must be a palpable one. 405 U.S. 727.

Plaintiff clearly does not fulfill these requirements. He has demonstrated no injury to himself. His status has not been reduced through his failure to acquire an oil

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lease. Plaintiff apparently proceeds on the presumption that had he received the lease, he would now be a rich man. Such a conclusion simply does not follow. Plaintiff has alleged no pertinent training, or knowledge in the area of oil. His acquisition of a lease might easily have resulted in phenomenal financial loss, and a lifetime of debt.

The cases which have granted standing on the ground of infringement of economic interest are not applicable to plaintiff's situation here. Such cases involve the palpable reduction, or imminent reduction, of an existent interest, as opposed to the denial of a desired one. See e.g. Data Processing Service v. Camp, 397 U.S. 150 (1969); Barlow v. Collins, 397 U.S. 159 (1969); F.C.C. v. Sanders Brothers Radio Station, 309 U.S. 470 (1939).

Here, plaintiff was not deprived of any existing right. Plaintiff was not deprived of anything, since he did not even apply for an oil lease. One who complains that he is deprived of a service which he did not actively seek should not be allowed to seek review and redress from the courts.

**Memorandum of Law in Support of Defendant United
States of America's Motion to Dismiss.**

POINT VI

**THE JUDICIAL ELECTION CLAIM
SHOULD BE DISMISSED AS FRIVOLOUS**

In its Decision and Order of March 28, 1975, this Court previously addressed the plaintiff's claim regarding the manner in which New York State provides for the selection of its judges. The claim was wholly insubstantial or frivolous. The Court's ruling on this point was affirmed by the United States Court of Appeals for the Second Circuit on November 21, 1975. For the reasons referred to in the decisions of both courts, this portion of plaintiff's claim should be dismissed.

Also, the United States joins in the arguments raised by the defendant State of New York in its motion to dismiss the complaint.

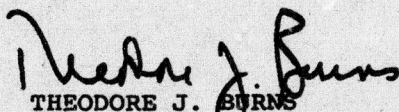
CONCLUSION

For all the reasons submitted hereinabove, it is respectfully submitted that the complaint should be dismissed.

DATED: Buffalo, New York, August 24, 1977.

Respectfully submitted,

RICHARD J. ARCARA
United States Attorney
Western District of New York



THEODORE J. BURNS
Assistant United States Attorney
of Counsel

Order Dated April 5, 1976.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. DONALD L. JACKSON,

Plaintiff

-vs-

Civ-74-293

UNITED STATES OF AMERICA and
STATE OF NEW YORK,

Defendants

The court will defer ruling on the motions to dismiss made by defendants United States of America and State of New York until after the completion of discovery. The court will also defer ruling on plaintiff's application for a jury trial for the present.

However, after considering the facts set forth in the affidavit of Theodore J. Burns, Assistant United States Attorney, of March 15, 1976, I grant his motion permitting the late filing of an answer or responsive pleading. The confusing history of this litigation set forth in his affidavit compels that relief. Any pleading or motion to be filed shall be filed within fifteen (15) days of this order.

Order Dated April 5, 1976.

-2-

So ordered.



JOHN T. CURTIN
United States District Judge

DATED: April 5, 1976

Order Dated November 1, 1977.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

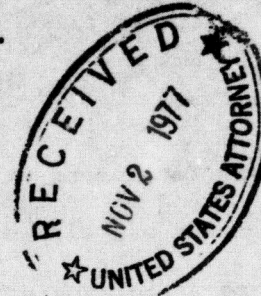
REV. DONALD L. JACKSON,

Plaintiff

-vs-

UNITED STATES OF AMERICA and
STATE OF NEW YORK,

Defendants



Civ-74-293

The plaintiff has sued the United States and the State of New York, apparently alleging several quite disparate causes of action. A review of the complaint reveals that he apparently is alleging the following causes of action:

- (1) That the granting of tax-exempt status to charitable foundations who discriminated against plaintiff is unlawful;
- (2) That there is the discriminatory granting of oil leases by the defendants;
- (3) That the manner of electing judges in New York State is a violation of plaintiff's constitutional rights.

The complaint is quite difficult to follow and it may be that he is attempting to allege other causes.

On October 18, 1977 he filed a memorandum in which he

Order Dated November 1, 1977.

asserted, among other claims, that the United States Government was withholding his wages and that federal funds were being mingled with private funds.

Plaintiff's complaint is prolix, difficult to follow, and deals with causes which the plaintiff has asserted in other actions which were either dismissed or withdrawn.

As to his suit against New York State, since plaintiff alleges that he is a citizen of the State of New York, this court lacks jurisdiction to hear a suit against the State by one of its own citizens. Furthermore, if this is considered as an action under § 1983, the complaint must fail because the State of New York is not a "person" within the meaning of that section.

In regard to his claim against the federal government, the plaintiff has attempted to litigate similar claims in prior suits. See Jackson v. Statler Foundation, Civ-71-592 and Civ-74-185. These suits were dismissed in a decision and order of this court dated July 13, 1977.

In regard to the other claims, plaintiff's claims as to each are completely deficient. None state a claim

Order Dated November 1, 1977.

and shall be dismissed as to both defendants.

So ordered.

John T. Curtin
JOHN T. CURTIN
 United States District Judge

DATED: November 1, 1977

Notice of Appeal.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ORIGINAL FILED

NOV 28 1977

RAY, DONALD L. JACKSON
P. O. Box 494
Buffalo, New York 14205

JOHN K. ADAMS,
Clerk

Petitioner

vs.

UNITED STATES OF AMERICA
AND
CITY OF NEW YORK

Civil No. 74-293

Defendants

NOTICE OF APPEAL

SIR: PLEASE TAKE NOTICE, that the following parts of
this lawsuit will be appealed:

Page 3 of the complaint Paragraph 5,

"another object or sub-object is for an Order declaring
the present procedure of electing Judges at large for the City
of Buffalo and County of Erie, authorized by the New York State
Legislature, which deprives Petitioner the right to a criminal
trial in the district where the crime was committed as
authorized by the 6th Amendment to United States Constitution."

Page 3-4

"That Article 6 Section 13 of the New York State Election
Law gives lawyers seeking a judicial position on the ballot
greater voting rights. Lawyers can file their nominating
petitions in all recognized political parties, while non-
lawyers can only file their nominating petitions in the
political party they are a member of."

Page 4 Paragraph 6,

"Another object or sub-object is for an order declaring
The Buffalo Housing Court, as being illegal."

Page 5, Paragraph 7,

"Another objective of this proceedings is to obtain a
declaratory judgment and incidental injunctive relief against
the defendants United States of America, to pay petitioner
his earned wages of \$5 Billion, plus interest from 1971, and
to make United States of America to enforce the law against
the Rich white people equally as they enforce the law against
ones who are not so rich."

Page 8, Paragraph 5, 6, 7

Page 9, Paragraph 18, 19, 20, 21,

Page 10 Paragraph 23, 24, 25, 26, 27, 28, 29
Page 12, 30, 32

Page 13, 33, 34, 35, 36, 37,

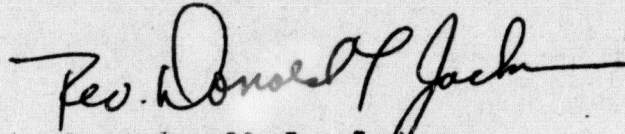
Page 14, therefore he pleads respectfully request the
Court to award the following relief:

Notice of Appeal.

Demores.

That the Judgment of Dismissal Order of Judge John T.
Curtin, Dismissing the lawsuit, dated November 1, 1977.

November 28, 1977



Rev. Donald L. Jackson
P. O. Box 494
Buffalo, New York 14205

Please take Notice, Plaintiff hereby request all parties
be present to Number the Record-~~on~~ at 3:00 P. M, on December
5, 1977.